

City of Happy Valley  
City Council Minutes  
Tuesday, April 21, 2009

Council Members Present:

Mayor Rob Wheeler  
Council President Lori DeRemer  
Councilor Markley Drake  
Councilor Tom Andrusko  
Councilor Michael Morrow

Staff Members Present:

Jason Tuck, Eco. & Comm. Dev. Dir.  
Pam Beery, City Attorney  
Michael Walter, Planning Director  
Sarah Mizejewski, Associate Planner  
Justin Popilek, Associate Planner  
Marylee Walden, City Recorder

Others Present:

(See attached sign-in sheet)

**CALL TO ORDER**

*Mayor Wheeler called the meeting to order at 7:00 pm and led in the flag salute. Roll call was taken.*

**APPEARANCE OF INTERESTED CITIZENS**

**Jeff Tabler**  
**14702 SE Francesca Lane**  
**Happy Valley, OR 97086**

Mr. Tabler made these points:

- Concerned about speed of traffic on SE 147<sup>th</sup> and 152<sup>nd</sup>
- Especially as traffic heads downhill it picks up speed
- Large truck traffic is especially worrisome

Mayor Wheeler suggested that Mr. Tabler attend a Traffic and Public Safety meeting to voice these same concerns, and also said that staff would convey his concerns to Steve Campbell.

**PRESENTATIONS**

Tree City USA Award – Mike Haasken, Oregon Department of Forestry

Mr. Haasken presented the Tree City USA Award to the Council. He noted that there are 51 communities in the state of Oregon that are Tree Cities. This is sponsored by the National Arbor Day Foundation, and administered by Oregon Department of Forestry. Trees provide an

important element aesthetically and emotionally, as well as shade, a barrier against noise, and habitat for natural wildlife.

Mr. Haasken's presentation to Council included a hat, a flag and decals for our street signs indicating the 5 years that we have been a Tree City USA.

## **CONSENT AGENDA**

### **a. Resolution 09-03 – A Resolution Proclaiming Arbor Day as an Officially Recognized Holiday in the City of Happy Valley**

*Council President DeRemer made a motion to adopt the Consent Agenda. Councilor Drake seconded the motion.*

*Roll Call vote: Ayes from Councilors Morrow, Andrusko, Drake, DeRemer, and Mayor Wheeler. The motion was passed with a unanimous vote.*

## **PUBLIC HEARINGS**

- A. Ordinance 387 – An Ordinance Annexing Territory Into the City of Happy Valley, Oregon and the North Clackamas Parks and Recreation District, Withdrawing Said Territory From the Clackamas County Enhanced Law Enforcement District, and Amending Official Map Exhibit 11 of the City of Happy Valley Land Development Ordinance No. 97

Mayor Wheeler opened the Public Hearing and read the Hearing Script into the record.

Justin Popilek, Associate Planner, gave the Staff Report which included these points:

- This application is an annexation and comprehensive plan amendment
- Annexation consists of 10 properties totaling 20 acres
- The zoning matrix which was approved by Council about 3 months ago will be utilized in this annexation
- Indicated various areas being annexed and zoning for each
- Ordinance at meeting slightly different than packet version due to change in wording pertaining to non remonstrance agreement as well as no emergency clause
- All properties included in this annexation petitioned to be a part of Happy Valley

### **Public Testimony**

Michael Robinson  
Perkins Coie  
1120 N. W. Couch Street  
Portland, OR 97209

Mr. Robinson is here on behalf of his client, Providence Health System of Oregon. He is in favor of this Ordinance.

William Ocello  
11648 SE Westgate Way  
Happy Valley, OR

Mr. Ocello testified concerning law enforcement issues adjacent to Area A and included these points:

- Concerned about illegal activities around the Valley View Evangelical Church area
- Would Happy Valley have the funding and capability of handling these issues
- There is an agreement between the church and nearby property owners regarding the building and operation of the church gymnasium
- A compromise was made that the church would control activities in adjacent fields and make certain of no organized activities
- There is constant soccer, baseball, football, parties, etc. as well as alcohol and drug use
- Asked if annexation would in any way negate the agreement
  - Pam Beery thought that agreement would not be affected but said that she would need to see it specifically to be sure of this
- Difficult or impossible for neighbors to reach church officials when problems arise

Mayor Wheeler closed the Public Testimony portion of the Public Hearing.

#### Staff Comments:

Justin Popilek noted that code enforcement personnel within the City will play a key role in the types of violations described by Mr. Ocello, and that this would be an advantage to the neighbors.

#### Council Questions:

Councilor Drake asked if the City could obtain a copy of the contractual agreement between the church and the homeowners, to provide helpful background information for the code enforcement officers. It was noted that this agreement would not become something that the City would be called upon to enforce.

*Councilor Drake made a motion to **amend** Ordinance 387 per the changes made on the copy distributed to Council. Councilor Andrusko seconded the motion.*

*Roll Call vote: Ayes from Councilors Morrow, Andrusko, Drake, DeRemer, and Mayor Wheeler. The motion was passed with a unanimous vote.*

*Councilor Drake made a motion to approve Ordinance 387 in a **single Council meeting**. Councilor Andrusko seconded the motion.*

*Roll Call vote: Ayes from Councilors Morrow, Andrusko, Drake, DeRemer, and Mayor Wheeler. The motion was passed with a unanimous vote.*

*Council President DeRemer made a motion to **approve Ordinance 387**. Councilor Drake seconded the motion.*

*Roll Call vote: Ayes from Councilors Morrow, Andrusko, Drake, DeRemer, and Mayor Wheeler. The motion was passed with a unanimous vote.*

B. East Happy Valley Comprehensive Plan – CPA 01-09 and LDO 01-09

Mayor Wheeler reopened the Public Hearing for both the CPA 01-09 and LDO 01-09 which had been continued from the April 7, 2009 City Council meeting.

Staff Report:

Michael Walter, Planning Director, began by noting that the previous testimony of Mr. Larry Burright and the resulting response from staff needed to be clarified. Michael Walter said that upon further research, it was found that Ordinance No. 244 did indeed change the zoning on this property to R10. An error was discovered in that the zoning map was never changed to reflect this zoning. This amendment to the official zoning map to reflect the actual zone will take place as soon as possible. Mr. Burright was thanked by the Mayor for his assistance. There will be an administrative amendment to the map.

Mr. Walter continued with proposed changes to the MCC development district. New language is being proposed that amends the City's requirement regarding joint versus separate master planning. With this new language, separate master planning can be contemplated as long as the square footage of the proposed building is no more than 60,000. Both parties find this option acceptable. A letter from Ms. MacLaren was entered into the record.

Councilor Drake asked if this proposed language change was initiated by staff or by the parties concerned and when this had occurred. Mr. Walter responded that this had been proposed since the last City Council meeting. Councilor Drake was concerned that this is the first time it is being seen by Council. Mayor Wheeler noted that both he and Council President DeRemer had been involved in a City meeting which addressed this issue. Goals for master planning can still be met with this change.

Public Testimony concerning this amendment:

Steve Schell  
805 SW Broadway, #1900  
Portland, OR

Mr. Schell represents JS4 and noted that he supports the changes proposed. He appreciates the cooperation that City staff has provided. He spoke to Councilor Drake's concern about the lateness of this change and said that parties had an understanding for a long time which collapsed due to economics. They now wish to proceed independently. He asked Council to approve this new language and strongly supports the amendment.

Mr. Walter continued with the Staff Report including these points:

- Wetland inventory and natural resource overlay concerns expressed in a letter from Donata Tiley
- Mapping of wetlands
  - Setback requirements in steep slope and drainage issue areas
- Support from Clackamas River Basin Council concerning direct benefit to stream corridor health
- Density restrictions in steep slope areas
- Density transfers and how this could work
- Residential capacity calculation comparisons
- Transfer rates
- 25' Buffer in certain steep slope and potential slide areas
  - Could require developers to erect retaining walls
  - Increased expense to developers
  - Down stream properties have experienced significant flooding because this buffer requirement has not been in place before
  - Many jurisdictions looking at more stringent slope development overlay codes
  - Staff recommendation is to leave the 25' Buffer requirement and to not choose the Planning Commission recommendation of crafting language to deal with slopes subject to a geotechnical study
  - Individual cases could be handled by means of a variance
  - City Engineer can require peer review if they seek additional knowledge

Public Testimony:

Michael Robinson  
Perkins Coie  
1120 N. W. Couch Street  
Portland, OR 97209

Mr. Robinson appeared representing Providence Health System of Oregon. He spoke in favor of the application specifically mentioning the Transportation System Plan. He is asking Council to adopt the Ordinances.

Gene Grant  
11311 S. E. Charview Court  
Happy Valley, OR 97086

Mr. Grant testified representing the Cascade Pacific Council for the Scouts. He thanked staff for all of the hard work and said that he is comfortable with Council recommendations and with a medium density plan. He supports adoption of the Ordinances.

Mr. Robinson then said that he concurs with Mr. Grant. They think that the next project should be a transfer of development rights program, however, work on that should not hold up the adoption of the Ordinances before Council tonight.

Monty Hurley  
AKS Engineering  
13910 S. W. Galbreath Drive

Sherwood, OR 97140

Mr. Hurley testified stating concerns about the steep slope overlay. He agrees with Mr. Grant and Mr. Robinson regarding the transfer of development rights program. As respects the 25' buffer, he is concerned that it may look fine on Scouter's Mountain but might have a far different effect on other property owners. The text and consequences are city-wide and not specific to Scouter's Mountain. He suggested that a 25' buffer could be imposed for geotechnical reasons with peer review if the issue is slope stability.

Scott Pendarvis  
Pendarvis Farms  
16581 S. E. Hagen Road  
Happy Valley, OR 97086

Mr. Pendarvis testified stating that the financial vehicle of transferable development rights will not be effective in the long run. If it is scaled up, and large tracts of land with over 25% in slope are bought up and traded openly, then that creates other problems as well. Densities could then be transferred from totally barren land. The vehicles of the restriction of contiguous property should be suspended or modified.

Larry Burright  
8750 SE 155<sup>th</sup>  
Happy Valley, OR 97086

Mr. Burright stated that he is not happy about this from where he lives. He will get 140 units of density from the City and somewhere someone will have to pay him large amounts of money. He believes that we have lost something because of the density that Scouter's Mountain will have and that down the road Scouter's Mountain will look something like S. E. 147<sup>th</sup> / 152<sup>nd</sup> instead of something really good. Mr. Burright also asked if bringing in 12 new mobile homes to his manufactured housing community will impact him. Will he be able to tear out old homes and replace them? Staff responded to this question that he will not be impacted and will be able to proceed with that plan. Existing allowed uses are not impacted. Mr. Burright then spoke to a non conforming use specific to his property and was advised that this would not be addressed in this meeting.

There was no further Public Testimony.

Michael Walter responded to the Public Testimony with these specific answers:

- Monty Hurley's concerns: Was considered at previous hearings and added language specifically addressing isolated slope areas
  - Mr. Hurley came back up and responded that specific text was written prior to final Planning Commission hearing and while it might still have mistakes he will take another look
- Michael Robinson's concerns: Rebuttal language is in the addendums that is in the 3 ring binder
  - Providence language was included in an addendum that went to the Planning Commission
  - Proposing to wipe out and recodify Chapter 16

- Everything has been entered into the record
- Mr. Hurley reappeared to address language concerns
  - Language regarding conservation slope area on Page 1160 Item B needs to be stricken
  - Thinks it will not function as intended
  - Council President DeRemer thinks slides are of significant concern and wants to be extremely careful about this
  - Individually this can be a different story but as a Council wants to look as a whole at the City of Happy Valley
  - Mr. Hurley thinks the 25' buffer is being used as a way to control density and he does not believe that is the real reason
  - Geotechnical issues are a good reason for a buffer but not density
  - Does not think that a 25' buffer will make a difference on slope and slide issues

Mr. Walter asked consultant Heather Corliss, Angelo Planning Group to speak.

Ms. Corliss made these points:

- Transition slope areas are isolated pockets
- An area of slope may be separated by a small area of less steep slope
- The idea was that the buffer would blend those areas together
- Page 1158 defines steep slope areas
- In other jurisdictions more often used as a setback rather than a restriction
- Recommendations for Happy Valley came out of work from other jurisdiction

Mr. Walter noted that geotechnically, a 25' buffer may not make a difference but it has an affect on density. Adding 25' as a safety measure geotechnically may not be necessary but the notion is there that just because we don't have to provide a geotechnical report does not mean it is not a good idea.

Council questions:

None

Mayor Wheeler closed the Public Testimony portion of the hearing for CPA 01-09 and LDO 01-09.

Council discussion:

Councilor Drake proposed adopting the plan as is and then dealing with the amendments separately. Ms. Beery said that this was a good idea.

Mr. Walter noted that the overall changes and addendums are minor. It was suggested that the Council vote on each amendment and then vote on the Ordinances.

### **Amendment to Ordinance 388:**

Amendment to policy 55C.1 – Mixed Commercial Center

*Council President DeRemer made a motion to adopt the **amendment** as outlined. Councilor Drake seconded the motion.*

*Roll Call vote: Ayes from Councilors Morrow, Andrusko, Drake, DeRemer, and Mayor Wheeler. The motion was passed with a unanimous vote.*

*Councilor Drake made a motion to adopt Ordinance No. 388 in a **single meeting**. Council President DeRemer seconded the motion.*

*Roll Call vote: Ayes from Councilors Morrow, Andrusko, Drake, DeRemer, and Mayor Wheeler. The motion was passed with a unanimous vote.*

*Mayor Wheeler continued with the First and Second Readings of Ordinance 388 by Title Only.*

*Councilor Drake made a motion to **adopt Ordinance No. 388**. Councilor Morrow seconded the motion.*

*Roll Call vote: Ayes from Councilors Morrow, Andrusko, Drake, DeRemer, and Mayor Wheeler. The motion was passed with a unanimous vote.*

### **Amendments to Ordinance 389:**

1. Removal of Planning Commission recommendation regarding 25' Steep Slopes Buffer

*Councilor Morrow made a motion to approve the above amendment. Council President DeRemer seconded the motion.*

*Roll Call vote: Ayes from Councilors Morrow, Drake, DeRemer, and Mayor Wheeler. Nay from Councilor Andrusko. The motion was passed with a 4 – 1 vote.*

2. Adopts only a portion of Homebuilders Association recommendation concerning peer review of geotechnical studies

*Councilor Morrow made a motion to approve the above amendment. Council President DeRemer seconded the motion.*

*Roll Call vote: Ayes from Councilors Morrow, Andrusko, Drake, DeRemer, and Mayor Wheeler. The motion was passed with a unanimous vote.*

3. Development Code text amendments for the MCC District

*Councilor President DeRemer made a motion to approve the above amendment. Councilor Morrow seconded the motion.*

*Roll Call vote: Ayes from Councilors Morrow, Andrusko, Drake, DeRemer, and Mayor Wheeler. The motion was passed with a unanimous vote.*



*Mayor Wheeler continued with the First Reading of Ordinance 389 by Title Only.*

*Discussion with City Attorney regarding whether or not a vote must occur at First Reading only. It was agreed to proceed with a vote and then check our new Charter for future reference.*

*Council President DeRemer made a motion to adopt Ordinance 389 (First Reading). Councilor Drake seconded the motion.*

*Roll Call vote: Ayes from Councilors Morrow, Andrusko, Drake, DeRemer, and Mayor Wheeler. The motion was passed with a unanimous vote.*

*Note: This Ordinance will come back to the May 5, 2009 City Council Meeting for Second Reading. Michael Walter will also prepare a synopsis of all changes that were incorporated into both Ordinances.*

## **REPORTS**

Economic and Community Development Director Report:

Jason Tuck updated Council as follows:

- Artwork has been installed including tribute to former Mayor James Robnett. Still to come is the history exhibit in the lobby windows which will be quite fantastic
- Attending Sunrise project advisory meetings
- Attending Harmony Road open house
- Community Policing Center will be complete within two weeks
- LEED Certification paperwork is being submitted and then it will be about two months for a response with amendments if any
- Asked Council to notice the computer monitor bracket which allows for Council monitors to lie flat

Councilor Reports:

- Rob Wheeler:
  - EHVCPC brought up transfer of development rights
  - State is currently working on a model so perhaps they can do the work on this project
  - ODOT meeting – Damascus received a grant which impacts Happy Valley
  - Working to protect the interests of Happy Valley
  - Clackamas Review article concerning Sunrise Corridor
  - Project advisory meeting tomorrow night concerning midpoint interchange
  - Cities Dinner
  -
- Markley Drake:
  - Requested that City Manager Review and Wastewater Partnership presentation be moved to May 19
  - Will be on vacation from April 29 through May 10
  - Updated Council on River Health Advisory Committee

- Suggested that Council write a letter thanking staff for all of their hard work on the East Happy Valley Comprehensive Plan

*Council President DeRemer made a motion to adjourn. Councilor Drake seconded the motion.*

*Roll Call vote: Ayes from Councilors Morrow, Andrusko, Drake, DeRemer, and Mayor Wheeler. The motion was passed with a unanimous vote.*

The meeting was adjourned at 10:30 pm.

Prepared and submitted by:

Marylee Walden  
City Recorder

These minutes were approved at the May 5, 2009 City Council Meeting.